learned Magistrate who tried the case. The accused was tried for an alleged offence against the Finance Regulations Proclamation, Regulation 5 (2).

Held, that the statement made by the accused to the Customs Officer was admissible by virtue of Regulation 5 (2) of the Finance Regulations Proclamation and should have been admitted in evidence.

Cases referred to :—

(1) *Tan Shu En & another v. Public Prosecutor* (1948) M.L.J. 196.

(2) *Chong Chin Yuan v. Public Prosecutor* (1949) M.L.J. 262.

CRIMINAL APPEAL from Magistrate's Court.

F. G. Cook (D. P. P.) for the Public Prosecutor.

Mrs. B. H. Oon for the respondent.

Callow, J. : — The short point in this appeal by the Public Prosecutor is whether the statement made by the respondent to the Customs Officer should have been declined by he Court below.

Before the Magistrate the respondent was represented by Mrs. Oon. The prosecution was conducted by a Customs Officer who was also a witness. This I deprecate; it is preferable for the Prosecuting Officer not to be a witness.

Mrs. Oon for the respondent argued that the statement which amounted to a confession having been taken by the Customs Officer after the accused had been detained should be rejected because the Customs Officer acted as a Police Officer. Learned Counsel relied on the case of *Tan Shu En & Anor. v. Public Prosecutor*[1].

But that was a case under the Opium and Chandu Proclamation. I am not prepared to enlarge on this decision. It seems that the attention of the Court below was not drawn to the case of *Chong Chin Yuan v. Public Prosecutor*[2] in which it was held that a statement made to a Customs Officer under section 126 of the Customs Enactment 1936 was admissible. The Finance Regulations Proclamation is for the safeguarding of the economic status of this country, and I am averse to restricting further the already difficult task of enforcing it. As Mr. Cook for the Public Prosecutor emphasised, the object of the prosecution is to strengthen the financial position of this country, and I do not consider interpretation of regulation 5 (2) should be otherwise than what plainly appears.

I have not seen this statement which Mrs. Oon described a confession. It was not suggested that it was obtained by duress, the sole argument advanced to me was that the Customs Officer should be regarded a Police Officer. If it is indeed a contrite confession of a stricken conscience it may be felt that there is little ethic in depriving the soul of the benefit of penitence.

But to decide the point before me I hold the statement admissible by virtue of regulation 5 (2) of the Finance Regulations Proclamation. The judgment of the Court below is set aside, and the case is remitted with the direction to admit the statement. The Magistrate will then decide if there is a case to answer, and if so the defence will be called upon.

Appeal allowed.

TONG YIN FAH v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C. J., Jobling and Spenser - Wilkinson, JJ.) February 25, 1950]

[F.M. — Criminal Appeal No. 1 of 1950]

Emergency Regulations, 1948, Regulation 5(1) — Juvenile Courts Ordinance, s. 15 — Whether a "young person" as defined in the Juvenile Courts Ordinance, who is found guilty of an offence under Regulation 5(1), can be sentenced to penal servitude.

In this case the appellant, who was sixteen years of age, was convicted under Regulation 5 (1) of the Emergency Regulations, 1948. He was sentenced to six years' penal servitude. The question considered on the appeal was whether this sentence could be imposed having regard to the Juvenile Courts Ordinance, 1947.

Held, that as the only punishments which could be imposed for an offence against Regulation 5 (1) of the Emergency Regulations, 1948, are death, penal servitude and whipping, the learned trial Judge was correct in not having recourse, before sentencing the appellant, to the provisions of section 15 (2) of the Juvenile Courts Ordinance, 1947 which apply only when the offence for which a young person has been found guilty is punishable with imprisonment.

Case referred to :—

(1) *Public Prosecutor v. Lee Ah Sam (f)* (1949) M.L.J. 236.

CRIMINAL APPEAL.

Appellant in person.

N. L. Cohen for the respondent.

The judgment of the Court of Appeal was delivered by :—

Willan, C. J. : — The appellant, who is sixteen years of age, was convicted under Regulation 5 (1) of the Emergency Regulations, 1948, of consorting with two persons, names unknown, at least one of whom had a revolver in his possession, in circumstances which raised a reasonable presumption that the appellant intended to act with such persons in a manner prejudicial to public safety. Both the assessors expressed the opinion that the appellant was guilty, and the learned trial Judge agreed with them. The appellant was sentenced to six years penal servitude.

There is no need for us to set out the facts — we need only say that the trial record discloses this to be a bad case. By the active co-operation of the appellant in consorting with two persons, whom he knew to be armed, a Chinese was murdered by them.

The appellant gave oral notice of appeal at the end of the trial. He has not filed any written grounds of appeal in amplification of that oral notice. But for the fact that the question arises whether the trial Judge should have considered the provisions of sub-section (2) of section 15 of the Juvenile Courts Ordinance, 1947, (hereinafter in this judgment referred to as "the Ordinance") before sentencing the appellant, we would have had no hesitation in summarily rejecting this appeal under section 27 of the Courts Ordinance, 1948.

Sub-section (2) of section 15 of the Juvenile Courts Ordinance — the Ordinance came into force as recently as the 1st of December, 1949 — reads :—

"No young person shall be sentenced or ordered to be imprisoned if he can be suitably dealt with in any other way whether by probation, fine, or committal to a place of detention, approved school, or advanced approved school, or otherwise."

Under the Ordinance a 'young person' means a person who has attained the age of fourteen years and is under the age of seventeen years, and therefore the appellant is a young person.

One of the prescribed punishments for an offence against Regulation 5(1) of the Emergency Regulations, 1948, is death, and therefore a Juvenile Court constituted under the Ordinance had no power to try the the appellant — see sub-section (4) of section 4 of the Ordinance, which reads :—

"A Juvenile Court shall have jurisdiction to try all offences except offences punishable with death."

The Ordinance does not affect the powers of the Supreme Court — see section 40 thereof — and therefore the appellant was properly tried by the High Court. By the same section the Supreme Court may exercise all the powers which a Juvenile Court may exercise under the Ordinance in respect of juvenile offenders.

As already stated, one of the prescribed punishments for an offence against Regulation 5(1) of the Emergency Regulations 1948, is death, the other punishments being penal servitude and whipping. Imprisonment, as opposed to penal servitude, is not one of the prescribed punishments for that offence. This Court, in *Public Prosecutor v. Lee Ah Sam (f)*[1] decided that penal servitude and rigorous imprisonment are two different forms of punishment.

Sub-section (2) of section 15 of the Ordinance does not mention penal servitude, whereas sub-section (1) does so; that sub-section reads :—

"No child shall be sentenced or ordered to be imprisoned or be sent to penal servitude for any offence or be committed to prison in default of payment of a fine, damages or costs."

Contrasting the language of those two sub-sections, we agree with Mr. Cohen, Federal Counsel, that since the Legislature has specifically included penal servitude in sub-section (1), and specifically excluded it from sub-section (2), the provisions of the latter sub-section apply only when the offence for which a young person has been found guilty is punishable with imprisonment. In such a case the trial Court must have regard to the provisions of that sub-section.

It follows that the learned trial Judge was correct in not having recourse to the provisions of sub-section (2) of section 15 of the Ordinance before sentencing the appellant.

As regards the period of penal servitude imposed, we have said already that this is a bad case, and we see no reason why that period should be reduced.

This appeal is dismissed.

Appeal dismissed.

TEJA SINGH & MOHAMED NASIR v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Spenser-Wilkinson, J.) January 28, 1950]

[Johore — Criminal Appeal No. 12 of 1949]

Penal Code, s. 161 — Evidence of agent provocateur — Whether corroboration is necessary — Joint trial — Sentence — Criminal Procedure Code, s. 170.

In this case the two appellants appealed against their conviction and sentence for abetment of bribery and bribery respectively. On appeal it was argued inter alia (a) that the methods adopted by the police in this case in procuring the commission of a traffic offence by the lorry driver; in approaching Teja Singh to use his influence with the Magistrate, thereby provoking him to commit the offence wherewith he is now charged; and in further aiding the commission of the offence of bribery by providing the funds were methods wholly foreign to the spirit of our law and that the Courts should frown upon such questionable methods to the extent of refusing to accept the evidence of witnesses who stoop to use them; (b) that the learned President of the Sessions Court exercised his discretion wrongly in trying the two appellants jointly.

Held, (1) that the police officers were at most agents provocateurs and not accomplices and that on the facts of this case the evidence of the police officers was properly received in evidence; (2) that the learned President exercised his discretion rightly in ordering a joint trial in this case; (3) that the offences in these cases were of corruption in the course of the administration of justice and therefore the sentence of two years' rigorous imprisonment imposed were not excessive.